

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

WILLIAM WOOD,
Petitioner,

v.

KELLY RYAN,
Respondent.

Civil Action No.
15-13081-NMG

ORDER

GORTON, J.

For the reasons stated below, the Court (1) denies without prejudice the petitioner's motion for appointment of counsel; and (2) orders the respondent to file a memorandum of law in opposition to the habeas petition.

State inmate William Wood has filed a petition for a writ of habeas corpus under 28 U.S.C. § 2254 in which he challenges his conviction for murder in the first degree. At the time he filed his petition, Wood also filed a memorandum of law in support thereof (Docket # 2). The respondent has filed an answer to the petition (Docket # 18) but has not submitted a memorandum of law in opposition to the petition, nor has the Court yet ordered her to do so.

Wood has moved for appointment of counsel (Docket # 11). The petitioner does not have a constitutional right to counsel in a habeas proceeding. See Coleman v. Thompson, 501 U.S. 722, 756-57 (1991); United States v. Saccoccia, 564 F.3d 502, 506 n.3 (1st Cir. 2009). The Court may appoint counsel for an indigent petitioner under the Criminal Justice Act if "the interests of justice so require." 18 U.S.C. § 3006A(a)(2). In determining

whether the interests of justice require the appointment of counsel, the Court must examine the totality of the circumstances, focusing on whether the petitioner has presented a colorable claim, the complexity of the legal issues, the intricacy of any factual issues, and the petitioner's ability to represent himself. See United States v. Guadalupe-Quinones, 65 Fed. Appx. 329, 333 (1st Cir. 2003); Abdullah v. Norris, 18 F.3d 571, 573 (8th Cir. 1994). In addition, if the Court decides to conduct an evidentiary hearing on the petition, the interests of justice will require appointment of counsel. See Rule 8(c) of the Rules Governing Section 2254 Cases.

Because the respondent has not filed a memorandum of law in opposition to the petition, the Court cannot yet determine whether the appointment of counsel under the Criminal Justice Act is merited. Further, the petitioner has ably set forth his position in his memorandum of law.

The Court therefore **DENIES** the motion for appointment of counsel (Docket # 11) without prejudice to renewal after the respondent has filed a memorandum of law in opposition to the petition.

The Court orders that the respondent file a memorandum of law in opposition to the petition **no later than February 5, 2016.**

So ordered.

/s/ Nathaniel M. Gorton
Nathaniel M. Gorton
United States District Judge

Dated: 12/4/2015